

AN ACT

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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*Codification  
District of  
Columbia  
Official Code*

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To protect the aquatic and environmental assets of the District of Columbia, to ban the use of disposable non-recyclable plastic carryout bags, to establish a fee on disposable carryout bags provided by grocery stores, drug stores, liquor stores, restaurants, and food vendors, to give the Office of Tax and Revenue the authority to implement rules and procedures to collect the fee, to provide for the issuance of Anacostia River Commemorative License Plates, to establish a nonlapsing fund known as the Anacostia River Cleanup and Protection Fund in which the fees, the net proceeds from the issuance of Anacostia River Commemorative License Plates, and the net proceeds from a voluntary income tax check-off are deposited, to authorize use of the fees; and to amend Title 47 of the District of Columbia Official Code and the District of Columbia Revenue Act of 1937 to make conforming amendments, including the creation of a voluntary income tax check-off.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Anacostia River Clean Up and Protection Act of 2009".

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) "Disposable carryout bag" means a bag of any material, commonly plastic or kraft paper, which is provided to a consumer at the point of sale to carry purchases. The term "disposable carryout bag" shall not include:

(A) Bags used by consumers inside stores to:

(i) Package bulk items, such as fruit, vegetables, nuts, grains, candy, or small hardware items;

(ii) Contain or wrap frozen foods, meat, or fish, whether prepackaged or not;

(iii) Contain or wrap flowers, potted plants, or other items where dampness may be a problem; and

(iv) Contain unwrapped prepared foods or bakery goods;

(B) Bags provided by pharmacists to contain prescription drugs;

(C) Newspaper bags, door-hanger bags, laundry-dry cleaning bags, or bags sold in packages containing multiple bags intended for use as garbage, pet waste, or yard waste bags;

(D) Paper carryout bags that restaurants, as defined in D.C. Official Code § 47-2827(e)(2), provide to customers to take food away from the retail establishment;

(E) Reusable carryout bags; or

(F) Bags provided to the consumer, as required by D.C. Official Code § 25-113(b)(5)(C), for the purpose of transporting a partially consumed bottle of wine.

(2) “Fund” means the Anacostia River Clean Up and Protection Fund established by section 6(a).

(3) “Retail establishment” means any licensee under a Public Health: Food Establishment Retail endorsement to a basic business license under Chapter 28 of Title 47 of the District of Columbia Official Code or under an off-premises retailer’s license, class A or B, pursuant to D.C. Official Code § 25-112.

(4) “Reusable carryout bag” means a bag with handles that is specifically designed and manufactured for multiple reuse and is made of cloth, fiber, other machine washable fabric, or durable plastic that is at least 2.25 millimeters thick.

Sec. 3. Requirements for disposable carryout bags made available to customers by retail establishments.

(a) Disposable carryout bags made of plastic that cannot be recycled shall not be sold or distributed, retail or wholesale, in the District.

(b) Disposable carryout bags made of paper shall:

(1) Be 100% recyclable;

(2) Contain a minimum of 40% post-consumer recycled content; and

(3) Display the phrase “Please Recycle This Bag”, or a substantially similar phrase, in a highly visible manner on the bag exterior.

(c) Disposable carryout bags made of plastic shall:

(1) Be 100% recyclable;

(2) Be made of high-density polyethylene film marked with the SPI resin identification code 2 or low-density polyethylene film marked with the SPI resin identification code 4; and

(3) Display the phrase “Please Recycle This Bag”, or a substantially similar phrase, in a highly visible manner on the bag exterior.

(d) Violation of the requirements set forth in this section shall subject the retail establishment to the penalties set forth in section 5.

Sec. 4. Establishment of fee.

(a)(1) A consumer making a purchase from a retail establishment shall pay at the time of purchase a fee of \$.05 for each disposable carryout bag.

(2) A retail establishment shall not advertise or hold out or state to the public or to a customer directly or indirectly that the reimbursement of the fee or any part thereof to be collected by the retail establishment will be assumed or absorbed by the retail establishment or otherwise refunded to the customer.

(3) All retail establishments shall indicate on the consumer transaction receipt the number of disposable carryout bags provided and the total amount of fee charged.

(b)(1)(A) Each retail establishment shall retain \$.01 of each \$.05 fee collected; provided, that an establishment that chooses to offer a carryout bag credit program to its customers, as set forth in subparagraph (B) of this paragraph, shall retain an additional \$.01 from each fee collected, for a total of \$.02 for each \$.05 fee collected.

(B) A retail establishment shall retain an additional \$.01 of each \$.05 fee for a carryout program which:

(i) Credits the consumer no less than \$.05 for each carryout bag provided by the consumer for packaging their purchases, regardless of whether that bag is paper, plastic, or reusable;

(ii) Is prominently advertised at each checkout register; and

(iii) Reflects the total credit amount on the consumer transaction receipt.

(C) The fees retained by the retail establishment under this paragraph shall not be classified as revenue and shall be tax-exempt for the purposes of Chapters 18, 20, and 27B of Title 47 of the District of Columbia Official Code.

(D) The fees retained by the retail establishment shall be excluded from the definition of retail sale under D.C. Official Code § 47-2001(n)(2) and from the definition of gross receipts under D.C. Official Code § 47-2761(5).

(E) The fees to be remitted to the District under subsection (b)(2) of this section shall be added to other tax payments in determining whether the electronic payment requirement under D.C. Official Code § 47-4402(c) applies.

(2) The remaining amount of each fee collected shall be paid to the Office of Tax and Revenue and shall be deposited in the Anacostia River Cleanup and Protection Fund established by section 6(a).

(c) The Office of Tax and Revenue shall develop rules for frequency and method for reporting and transmitting the fees, as set forth in subsection (a) of this section, to the District.

(d) Except to the extent of any inconsistency with this act, the same provisions to Title 47 of the District of Columbia Official Code that are applicable to the gross sales tax shall govern the administration, collection, and enforcement of the fee set forth in subsection (a) of this section.

#### Sec. 5. Rules; enforcement and penalties for violation.

(a) The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall issue

rules to implement the provisions of this act within 90 days after the effective date of this act.

(b) If the Mayor determines that a violation has occurred, the retail establishment shall be liable for the fees under section 4(a) and:

(1) Upon the 1<sup>st</sup> violation, written warning notice that a violation has occurred shall be issued to the retail establishment. No penalty shall be imposed for the 1st violation.

(2) Upon subsequent violations, the Mayor shall impose a penalty on the retail establishment. The penalty shall not exceed:

(A) \$100 for the 1st violation after the written warning in a calendar year;

(B) \$200 for the 2nd violation in the same calendar year; or

(C) \$500 for the 3rd and each subsequent violation in the same calendar year.

(3) No more than one penalty shall be imposed upon a retail establishment within a 7-day period.

(c) If payment of any amounts due under this section is not received on or before the due date, a penalty shall be added as the Mayor provides by rule.

(d) Revenues collected through citations for violation of this act shall be used only for enforcement costs, including hiring inspectors and other staff, and administrative costs associated with enforcement of this act.

#### Sec. 6. Establishment of the Anacostia River Clean Up and Protection Fund.

(a) There is established as a nonlapsing fund the Anacostia River Clean Up and Protection Fund. The fees established by section 4 for disposable carryout bags and transmitted to the Office of Tax and Revenue, the net proceeds from the issuance of Anacostia River Commemorative License Plates, and the net proceeds from the voluntary tax check-off provided in D.C. Official Code § 47-1812.111c shall be deposited in the Fund. The Fund shall be used solely for the purposes set forth in subsection (b) of this section and shall be administered by the Office of the Director of the District Department of the Environment.

(b) The Fund shall be used solely for the purposes of cleaning and protecting the Anacostia River and other impaired waterways. Funds shall be used for the following projects in the following order of priority:

(1) A public education campaign to educate residents, businesses, and tourists about the impact of trash on the District's environmental health;

(2) Providing reusable carryout bags to District residents, with priority distribution to seniors and low-income residents;

(3) Purchasing and installing equipment, such as storm drain screens and trash traps, designed to minimize trash pollution that enters waterways through storm drains, with priority given to storm drains surrounding the significantly impaired tributaries identified by the District Department of the Environment;

(4) Creating youth-oriented water resource and water pollution educational

campaigns for students at the District public and charter schools;

(5) Monitoring and recording pollution indices;

(6) Preserving or enhancing water quality and fishery or wildlife habitat;

(7) Promoting conservation programs, including programs for wildlife and endangered species;

(8) Purchasing and installing equipment designed to minimize trash pollution, including, recycling containers, and covered trash receptacles;

(9) Restoring and enhancing wetlands and green infrastructure to protect the health of the watershed and restore the aquatic and land resources of its watershed;

(10) Funding community cleanup events and other activities that reduce trash, such as increased litter collection;

(11) Funding a circuit rider program with neighboring jurisdictions to focus river and tributary clean-up efforts upstream;

(12) Supporting vocational and job training experiences in environmental and sustainable professions that enhance the health of the watershed;

(13) Maintaining a public website that educates District residents on the progress of clean-up efforts; and

(14) Paying for the administration of this program.

(c) The Fund shall not be used to supplant funds appropriated as part of an approved annual budget for Anacostia River cleaning activities.

(d) All funds deposited into the Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of the fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (b) of this section without regard to fiscal year limitation, subject to authorization from Congress.

#### Sec. 7. Public information and outreach campaigns.

Beginning on or before October 1, 2009, the District Department of the Environment shall:

(1) Conduct an intensive public information campaign aimed at educating the public on the importance of reducing the number of disposable carryout bags entering the waste stream and the impact of disposable carryout bags on the rivers, tributaries, and environmental health of the District; and

(2) Conduct an outreach campaign that includes:

(A) A public-private partnership to provide reusable carryout bags to District residents; and

(B) Working with service providers that assist seniors and low-income residents to distribute information and multiple reusable carryout bags to low-income households.

Sec. 8. Issuance of Anacostia River Commemorative License Plates.

(a) The Mayor shall issue reflectorized motor vehicle identification tags of a design to enhance public awareness of the District of Columbia's efforts to restore and protect the Anacostia River and these identification tags may be called Anacostia River Commemorative License Plates. These identification tags shall retain and display the "TAXATION WITHOUT REPRESENTATION" slogan of the current District of Columbia motor vehicle identification tags.

(b) In addition to the annual registration fee required by section 3(a) of Title IV of the District of Columbia Revenue Act of 1937, approved August 17, 1937 (50 Stat 680; D.C. Official Code § 50-1501.03(a)), a one-time fee of \$25 shall be charged each time new Anacostia River Commemorative License Plates are issued. There shall also be a \$20 renewal fee for Anacostia River Commemorative License Plates, which fee shall be charged biennially.

(c) The Mayor shall recover the cost of producing and issuing the Anacostia River Commemorative License Plates from the proceeds collected from the one-time \$25 fee and the biennial \$20 renewal fee established under subsection (b) of this section,

(d) The balance shall be paid into the Anacostia River Clean Up and Protection Fund established by section 6(a) and used for the purposes described therein.

(e) The Mayor shall implement this section within 180 days after the effective date of this act. If an extension is necessary, the Mayor shall notify the Council prior to the implementation date.

Sec. 9. Conforming amendments.

(a) Title 47 of the District of Columbia Official Code is amended as follows:

(1) The table of contents for Chapter 18 is amended by adding a new section designation to read as follows:

"47-1812.11c. Anacostia River Clean Up and Protection Fund tax check-off."

(2) Section 47-1803.02(a)(2) is amended by adding a new subparagraph (Y) to read as follows:

"(Y) Fees retained by a retail establishment under section 4(b)(1) of the Anacostia River Clean Up and Protection Act of 2009, passed on 2<sup>nd</sup> reading on June 16, 2009 (Enrolled version of Bill 18-150)."

(3) A new section 47-1812.11c is added to read as follows:

"§ 47-1812.11c. Anacostia River Clean Up and Protection Fund tax check-off.

"(a) For the 2009 tax year, and for each subsequent tax year, there shall be provided on the District individual income tax return a voluntary check-off that indicates that an individual may contribute a minimum donation or gift of \$1 to the Anacostia River Clean Up and Protection Fund ("Fund") established by section 6(a) of the Anacostia River Clean Up and Protection Fund Act of 2009, passed on 2<sup>nd</sup> reading on June 16, 2009 (Enrolled version of Bill 18-150). The contribution shall reduce any refund owed to the individual taxpayer or increase

Amend  
§ 47-1803.02

New  
§ 47-1812.11c

the tax owed by the individual taxpayer on the taxpayer's tax return. The funds generated from the tax check-off shall be deposited in the Fund, except that any cost incurred by the Mayor in collecting, processing, accounting, or disbursing the funds generated by the tax check-off shall be reimbursed to the Mayor from the funds generated by the tax check-off.

“(b)(1) Except as provided in paragraph (2) of this subsection, any unpaid District tax liability on an individual income tax return shall render any voluntary tax check-off election void. Any amount paid for the purpose of contributing to the Fund shall be used first to satisfy any unpaid tax liability in whole or in part.

“(2) If there is any amount that remains after satisfaction of the unpaid tax liability, the amount shall be deposited in the Fund.

“(c) The Mayor shall include with the individual tax return package a description of the purposes for which the Fund was established and projects for which the Fund may be used.”

(4) Section 47-2001(n)(2) is amended as follows:

Amend  
§ 47-2001

(A) Subparagraph (G) is amended by striking the word “ or” at the end.

(B) Subparagraph (H) is amended by striking the period at the end and inserting the phrase “; or” in its place.

(C) A new subparagraph (I) is added to read as follows:

“(I) Fees retained by a retail establishment under section 4(b)(1) of the Anacostia River Clean Up and Protection Act of 2009, passed on 2<sup>nd</sup> reading on June 16, 2009 (Enrolled version of Bill 18-150).”

(5) Section 47-2005 is amended by adding a new paragraph (36) to read as follows:

Amend  
§ 47-2005

“(36) Fees retained by a retail establishment under section 4(b)(1) of the Anacostia River Clean Up and Protection Act of 2009, passed on 2<sup>nd</sup> reading on June 16, 2009 (Enrolled version of Bill 18-150).”

(6) Section 47-2761(5) is amended by striking the phrase “except that beginning with the ballpark fee that is required by this chapter to be paid in fiscal year 2005 and thereafter, the calculation of the income shall not include the collection of federal or local taxes on motor vehicle fuel.” and inserting the phrase “provided, that the calculation of the income shall not include:

Amend  
§ 47-2761

“(A) The collection of federal or local taxes on motor vehicle fuel; or

“(B) Fees retained by a retail establishment under section 4(b)(1) of the Anacostia River Clean Up and Protection Act of 2009, passed on 2<sup>nd</sup> reading on June 16, 2009 (Enrolled version of Bill 18-150).” in its place.

(b) The District of Columbia Revenue Act of 1937, approved August 17, 1937 (50 Stat. 673; codified in scattered sections of the D.C. Official Code), is amended as follows:

(1) Section 3 of Title IV (D.C. Official Code § 50-1501.03) is amended as follows:

Amend  
§ 50-1501.03

(A) Subsection (a)(1) is amended by adding a new sentence at the end to read as follows:

“Any person ordering Anacostia River Commemorative License Plates shall pay the fees as set forth in section 8(b) of the Anacostia River Clean Up and Protection Act of 2009, passed on 2<sup>nd</sup> reading on June 16, 2009 (Enrolled version of Bill 18-150).”.

(B) Subsection (d) is amended by striking the phrase “as established by section 3a” and inserting the phrase “as established by section 3a and the fees collected for Anacostia River Commemorative License Plates shall be deposited in the Anacostia River Clean Up and Protection Fund established by section 6(a) of the Anacostia River Clean Up and Protection Act of 2009, passed on 2<sup>nd</sup> reading on June 16, 2009 (Enrolled version of Bill 18-150).”.

(2) Sections 102b and 102c (D.C. Official Code §§ 50-801 and 50-802) are repealed.

Repeal  
§§ 50-801, 50-802

Sec. 10. Applicability.

Sections 2 through 6 shall apply as of January 1, 2010.

Sec. 11. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 12. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

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Chairman  
Council of the District of Columbia

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Mayor  
District of Columbia